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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) 4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

- - - - -

THE VIDEOTAPED DEPOSITION OF
BERTON FISHER, PhD, produced as a witness on
behalf of the Defendants in the above styled and
numbered cause, taken on the 23rd day of January,
2008, in the City of Tulsa, County of Tulsa, State
of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

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I N D E X

W I T N E S S

P A G E

BERTON FISHER, PhD

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1 (Whereupon, the deposition began at
2 9:00 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Dr. Bert Fisher. Today is January
5 23rd, 2008. The time is 9:00 a.m. Would counsel 09:00AM
6 please identify themselves for the Record?

7 MR. PAGE: David Page representing the
8 State of Oklahoma.

9 MR. GARREN: Richard Garren for the State
10 of Oklahoma. 09:00AM

11 MR. ELROD: John Elrod for defendant
12 Simmons.

13 MR. THOMPSON: Paul Thompson, Jr.,
14 defendant George's.

15 MR. McDANIEL: Scott McDaniel for Peterson 09:00AM
16 Farms, Inc.

17 MR. GEORGE: Robert George representing the
18 Tyson defendants.

19 MR. TUCKER: John Tucker for Cargill.

20 MR. MIRKES: Craig Mirkes for Peterson
21 Farms.

22 MR. SANDERS: Bob Sanders for the Cal-Maine
23 defendants.

24 MS. GRIFFIN: Jennifer Griffin representing
25 Willow Brook Foods. 09:00AM

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1 VIDEOGRAPHER: Thank you. The witness may
2 be sworn in.

3 BERTON FISHER, PhD,
4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth, testified
6 as follows:

7 MR. PAGE: Robert, before we begin, can we
8 have an agreement that we'll reserve objections
9 except as to form?

10 MR. GEORGE: Certainly. 09:01AM

11 MR. PAGE: Thank you.

12 DIRECT EXAMINATION

13 BY MR. GEORGE:

14 Q Dr. Fisher, would you state your full name
15 please? 09:01AM

16 A John Berton Fisher.

17 Q Dr. Fisher, you understand you're here today
18 to give a deposition in connection with opinions
19 that you have put forward on behalf of the State of
20 Oklahoma in a case filed in the Northern District of 09:01AM
21 Oklahoma?

22 A Yes.

23 Q Okay. You've given a deposition before;
24 correct?

25 A I have. 09:01AM

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1 origin was a farm that was associated with Petersons
2 in a record or in an observation, record of an
3 observation.

4 Q Was it your job, sir, to determine how many
5 active poultry houses there are in the Illinois 04:55PM
6 River watershed?

7 A Yes.

8 Q And I read your methodology for how you
9 identified the active houses. Am I to -- was every
10 poultry house in that watershed viewed on the ground 04:56PM
11 to confirm whether it's active or not?

12 A Every poultry house within the watershed that
13 was identified in the spring of 2005 aerial
14 photograph that could be viewed from a ground
15 location on public access was viewed. 04:56PM

16 Q What's the potential error rate in your
17 determination of the number of poultry houses in the
18 watershed?

19 A Okay. That was not the single criteria for an
20 active house. 04:56PM

21 Q Okay. I asked the question -- this is a
22 different question. What is the error rate in your
23 estimation of the number of poultry houses, active
24 poultry houses in the Illinois River watershed?

25 MR. PAGE: Object to the form. 04:57PM

1 **A** That information is under continual review. I
2 think the error rate is probably better than 10
3 percent, less than 10 percent.

4 **Q** Based on what?

5 **A** Based upon the fact that we have corroborating 04:57PM
6 information from files produced by the defendants
7 represented in this room, as well as from the tax
8 assessor records, in which those taxes are assessed
9 of the integrator but they are divvied up by school
10 district and assigned specifically to individual 04:57PM
11 names.

12 **Q** You've actually compared your house count with
13 the information that the defendants have produced in
14 this case?

15 **A** Well, that's kind of a long question because 04:57PM
16 I've compared the house counts to information
17 produced by the defendants in this case as of
18 probably awhile back, maybe several months ago. I
19 understand there has been additional production. In
20 fact, there were additional production of bird 04:58PM
21 counts by -- within the watershed by the defendants
22 within the last week or so.

23 **Q** Which would be a more reliable number, sir,
24 what my client maintains on its books as the number
25 of active poultry houses or what your methodology 04:58PM